IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 47 OF 2005

Shri Krishnanath Sakharam
Shirodkar, major of age,
r/o Firguem Bhat,
Nerul, Bardez,Goa. ... Petitioner

Versus

1. State of Goa, through
the Chief Secretary,
with his office at Goa
Legislative Assembly
Complex, Secretariat,
Porvorim Plateau, Goa,

2. The Land Acquisition Officer,
Land Acquisition Office,
PWD Cell, Altinho,
Panaji, Goa. ... Respondents.

Shri S. D. Lotlikar, Senior Advocate with Mr. S Y. Thaly, advocate for the petitioner.

Mr. S.S. Kantak, Advocate General with Ms G. Bhonsle, Addl. Government Advocate for the respondents.

CORAM : S. S. PARKAR &
V.M. KANADE, JJ.

DATE : 19th July, 2005.

ORAL ORDER (Per Parkar, J.)

Heard both sides.

2. By this petition the petitioner seeks a writ of

mandamus against the respondent no.2, the Land Acquisition Officer, to make a reference under Section 18 of the Land Acquisition Act, 1894, by virtue of his letter dated 17th October, 2003, addressed to the Land Acquisition Officer.

3. The undisputed facts are as follows:-

The Award was passed under the Land Acquisition Act on 20th June, 2003. The petitioner received the notice about the passing of the Award on 23rd September, 2003. Thereafter, the petitioner addressed a letter dated 17th October, 2003, to the Land Acquisition Officer which is part of Exh.D colly., giving the names of the nine heirs of his father who had expired on 7th February, 1986 and stating that a deed of succession was executed on 25th August, 1993, before the Notary Ex-officio, Panaji, and all the legal heirs were entitled to the amount of compensation awarded in respect of the land acquired. He also stated that all the legal heirs had executed a power of attorney in his favour which he was producing. The last two paragraphs of the said letter read as follows:-

> "As I am holding power of attorney of all the legal heirs the compensation awarded, may kindly be released to me.

> I am accepting the said amount under protest, without prejudice to our right to file an application for reference /enhancement of compensation under the Land Acquisition Act."

No doubt, the said amount of compensation was accepted by the petitioner under protest and without prejudice to his right to file an application for reference for enhancement of compensation under the Act, but no such application was filed by any heir. The aforesaid paragraphs even do not indicate the intention on the part of the petitioner to file an application for reference.

4. The learned counsel for the petitioner laying undue emphasis on the last paragraph of the above letter argued that the petitioner having accepted the amount of the Award under protest, it would only mean that he was challenging the compensation granted to him under the Award passed by the Land Acquisition Officer. In support of his contention he relied on two decisions of the Madras High Court, firstly in the case of ***Venkatasami Naidu & Ors. vs. State of Madras, represented by the Collector of Salem*** , (AIR 1964 Mad 434). That was a case where the Madras High Court was considering the letter addressed

to the authorities within six weeks from the date of the Award, the material portion of which reads as follows:-

> "As you have not taken into account our objections and the record produced by us and as you have not included the value of the trees, the amount now determined by you is very low. We hereby make known to you that we are not in a position to accept that amount as compensation."

The aforesaid paragraph undoubtedly meets with the requirement of the provisions of Section 18 of the Land Acquisition Act, inasmuch as it is made known and clear that the party did not accept the amount of compensation as correct and the reasons have been given as to why the compensation given by the Land Acquisition Officer was not adequate. The second judgment relied upon on behalf of the petitioner is in the case of ***Maddur Krishnammal vs. Collector of Coimbatore ,*** (AIR 1927 Mad.282). That was a case where the letter addressed to the Land Acquisition Officer by the parties was construed by the Revenue Divisional Officer to be a requisition for reference under Section 18 of the Land Acquisition Act and rightly so, as the letter dated 26th February, 1923, concluded with the following words:-

> "In these circumstances I submit under S.18 of the Act 1 of 1894 that the matter may be kindly adjudicated by you. A copy of the award is enclosed herewith."

The aforesaid lines quoted from the concluding part of the letter which was addressed to the Revenue Divisional Officer makes it absolutely clear that the party, by the said letter, was submitting an application under Section 18 of the Land Acquisition Act challenging the Award. Thus, in both the aforesaid judgments cited on behalf of the petitioner, it is very clear that by the communications quoted above, the parties had exercised their right under Section 18 of the Land Acquisition Act.

5. So far as the present case is concerned, by the letter of 17th October, 2004, the petitioner only wanted to indicate that his acceptance of compensation should not be taken or understood to mean that he was foregoing his right to file an application for reference under Section 18 of the Land Acquisition Act. The said letter even does not indicate any ground of challenge or as to why he is not satisfied with the Award, nor does it require the Land Acquisition Officer to refer the matter under Section 18 of the Land Acquisition Act for the determination of the market value

by the Court and, therefore, the Land Acquisition Officer was not required to do anything pursuant to the said letter, except to file it. The said letter was only in the nature of an intimation or information to the Land Acquisition Officer that he was accepting the amount of compensation under protest and without prejudice to his right to file an application for reference, which admittedly he never filed. The said letter does not even express his intention to file an application for reference, leave alone whether by the said letter he can be said to have applied for a reference under Section 18 of the Land Acquisition Act. This is quite obvious from the fact that the letter of 17th October, 2003, on which heavy reliance is placed on behalf of the petitioner, was addressed to the Land Acquisition Officer in response to the notice received by the petitioner from the Land Acquisition Officer on 23rd September, 2003, annexed as Exh."C" to the petition, in which he was given intimation about the amount of compensation payable to him and it was added therein that he might accept the payment "under protest" "without prejudice to your (his) right to have the matter referred to the Court". Thus, the last portion of the paragraph of the letter dated 17th October, 2003, indicating that he was

accepting the compensation without prejudice to his right to file an application for reference, was inserted in response to and just adopting the words used by the Land Acquisition Officer in his notice sent to him under Section12 (2) of the Land Acquisition Act.

6. It is pertinent to point out that even the petitioner did not understand his letter of 17th October, 2003, to be an application for reference under Section 18 of the Act as is obvious from his letter dated 25th October, 2004, addressed to the Land Acquisition Officer more than a year later by which he had requested the Land Acquisition Officer to treat his letter dated 17th October, 2003 as an application for reference under Section 18 of the Act and refer the matter to the District Court for enhancement of the compensation. Even in this letter written more than a year later, the petitioner did not assert that his letter dated 17th October, 2003, was an application for making a reference under Section 18 of the Act.

7. The learned Advocate General has placed reliance on the decision of this Court in the case of ***Government & Nanu N. Kothare etc.***, 1905 Vol. VII Bom.L.R. 697. There the Court was considering the letter addressed to the Land Acquisition

Officer by the solicitors on behalf of the claimant stating as follows:-

> " We have the honour on behalf of our clients Messrs. Nanu Narayan Kothare and Hormusji Muncherji Chichgur, the surviving executors of the late Mr. Chanda Ramji, to state that they do not accept the said award.
>
> We will send you in due time a formal request to refer the matter for the determination of the High Court of Judicature at Bombay under section 18 of the Land Acquisition Act, 1894. "

It appears that the application for reference was not thereafter made within the prescribed period and, therefore, reliance was placed on the aforesaid letter claiming that the aforesaid letter was tantamount to an application for reference under Section 18 of the Act. Rejecting the said contention, it was held that Section 18 of the Act requires that the application should state the grounds on which objection to the Award is taken and require the Collector to refer the matter for the court's determination, but the letter under consideration was only an intimation that the party would file an application for reference under Section 18 of the Act.

8. On behalf of the respondents reliance was also placed on the judgment of the Allahabad High Court in the case of ***Om Gir & Ors. vs. The State of U.P. & Ors***., (AIR 1971 All. 413). There the court was considering the letter addressed to the officer to the effect that the party was accepting the compensation subject to the determination of the compensation by the Civil Court and it was thinking of making a reference to the District Court against the Award. Construing the said letter, it was held that till the writing of that letter the party had not settled in its mind and was not definite about making an application for a reference. Similarly, in this case, it is quite obvious that on 17th October, 2003, the petitioner had not even formed an intention, much less decided, to file an application for reference. The amount was accepted subject to his right to challenge the adequacy of the compensation by filing an application for reference under Section 18 of the Act, if he chose to do so.

9. The learned counsel lastly placed reliance on the judgment of the Supreme Court in the case of ***A. Viswanatha Pillai & Ors. vs. Special Tahsildar for Land Acquisition No.IV & Ors.***, (AIR 1991 SC 1966). He referred to the portion of

paragraph 2 of the judgment which reads as follows:-

> "It is surprising that the State having acquired the property of a citizen would take technical objections regarding the entitlement of the claim. The State certainly is right and entitled to resist claim for enhancement and lead evidence in rebuttal to prove the prevailing price as on the date of notification and ask the court to determine the correct market value of the lands acquired compulsorily under the Act."

In our view, the said observations have been made in an altogether different context and are not applicable to the facts of the present case, which has been discussed at sufficient length hereinabove. This is not a case of technical objection taken on behalf of the State but on the other hand, the petitioner wants the respondents and this Court to put the construction on his abovereferred letter which was not then even thought of by him as is obvious from his subsequent letter of 25th October, 2004 addressed to the Special Land Acquisition Officer, whereby for the first time he was requesting the Special Land Acquisition Officer to treat the letter of 17th October, 2003 as an application for reference made under

Section 18 of the Land Acquisition Act which was, in fact, too late in the day.

10. The learned counsel fairly conceded that the petitioner having power of attorney from the other heirs of the deceased owner of the land, had received the intimation about the passing of the Award and thereafter withdrawn the amount awarded in respect of the acquisition of the land. The petitioner had also filed objections before the Special Land Acquisition Officer under Section 9 of the Land Acquisition Act as indicated by his own letter dated 27th March, 2003, part of Exh."D" colly. to the petition.

11. In the circumstances, this petition is devoid of merits and is, therefore, rejected.

S. S. PARKAR, J.

V. M. KANADE, J.

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